

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: July 22, 1993
CASE NO. 83-CTA-162

IN THE MATTER OF

U.S. DEPARTMENT OF LABOR

v.

STEUBEN COUNTY, NEW YORE

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

This case arises under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. §§ 801-999 (Supp. V 1981), and its implementing regulations, 20 C.F.R. Parts 675-680 (1990). ^{1/} The Grant Officer (G.O.) filed exceptions to the Decision and Order (D. and O.) of the Administrative Law Judge (ALJ) insofar as it held that certain expenses which were underreported by the grantee, Steuben County, could be offset against other expenses which the G.O. disallowed. The case was accepted for review in accordance with 20 C.F.R. § 676.91(f).

BACKGROUND

The grantee was the recipient of eighteen CETA grants with a total budget of \$7,489,068.00 applicable to programs covering the

^{1/} CETA was repealed effective October 12, 1982. The replacement statute, the Job Training Partnership Act, 29 U.S.C. §§ 1501-1791 (1988), provides that pending proceedings under CETA are not affected. 29 U.S.C. § 1591(e).

CETA regulations were last published in the Code of Federal Regulations in 1990.

period October 1, 1979, to December 31, 1981. ^{2/} Administrative File (A.F.) Tab 1, Schedule B. In a final determination dated January 27, 1983, the G.O. disallowed \$231,031.00 A.F. Tab 6. Prior to the scheduled hearing, the parties stipulated that the amount of the disallowance be reduced to \$92,928.00. The parties further stipulated that the grantee underreported expenses in various identified grants totalling \$75,896.00. ^{3/} The issue remaining, and submitted to the ALJ on the record, was whether the grantee could apply the \$75,896.00 in underreported expenses to satisfy that amount of the \$92,928.00 disallowed.

The ALJ noted the G.O.'s argument that the underreported expenditures were in grants and grant years different from those in which funds were disallowed and that allowing a set-off would amount to applying funds from one program for other and different programs. D. and O. at 2. He concluded, however, that whether the specific program grants or grant years matched was irrelevant because what was involved was an offset of debt between the parties. Id. Finding that the two claims should be settled in one action, the ALJ allowed the underreported expenses to be offset against the disallowed amount and ordered the grantee to pay the difference, \$17,032.00, to the Department of Labor. Id. at 3.

^{2/} The audit examined \$6,120,757.00 in accrued costs through September 30, 1981, plus \$216,560.00 in accrued costs under a prior audit for a total of \$6,337,317.00. A.F. Tab 1.

^{3/} Stipulation of Facts, paragraph 5.

DISCUSSION

The principle of setoff permits parties that owe mutual debts to each other to state accounts between them, subtract one from the other and pay only the balance. In re Bevill. Bressler & Schulman Asset Mgmt., 896 F.2d 54, 57 (3d Cir. 1990); GEC Industries, Inc. v. Colonial Rubber Works, Inc. (In re GEC Industries, Inc.),, 128 B.R. 892 (Bankr. D. Del. 1991). The issue here, however, is not one of debt collection. Rather, it is a request to substitute costs, viewed as part of the totality of allowed and disallowed costs, which occurs at the audit resolution stage before a collectible debt is established. ^{4/}

Where funds remain under a grant as a result of disallowed costs, a grantee may submit other grant costs as substitutes and these costs are eligible for payment up to the maximum amount authorized by the grant. Id. at 247. Under applicable CETA cost principles, see 20 C.F.R. § 676.40-1(a), costs will be allowed only if, among other things, they are reasonable, allocable and necessary to achieve approved programs goals. 41 C.F.R. § 29-70.103 (1984). ^{5/} See 41 C.F.R. § 1-15.703-1. ^{6/} To be

^{4/} For this reason, 4 C.F.R. § 102.3, cited by the ALJ, is inapposite as it addresses offset of claims, which is defined as synonymous with debt. See 4 C.F.R. § 101.2.

^{5/} Chapters 1-49 of 41 C.F.R. were last published in the July 1, 1984, edition. These regulations continue to apply to grants entered into prior to September 19, 1983. 41 C.F.R. Subtitle A [Note].

^{6/} The cost standards applicable to state and local governments are those set forth at 41 C.F.R. Subpart 1-15.7. 41 C.F.R. § 29-70.103(a).

allocable, a cost must benefit a particular objective under a grant. 41 C.F.R. § 1-15.703-2(a). Any such cost "may not be shifted to other Federal grant programs ^{7/} to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons." 41 C.F.R. § 1-15.703-2(b).

The cost principles enunciated in the foregoing regulations require that costs may only be charged to the grant under which they were incurred, see supra note 6, because that is the grant which benefits from their expenditure. In the instant case, the parties have stipulated that the disallowed amounts are from different grants than the grantee's underreported expenses. Stipulation of Facts, paragraphs 4 and 5. Accordingly, under the applicable CETA regulations, the grantee is not permitted to substitute any of its \$75,896.00 in expenses for the \$92,928.00 in disallowed costs.

Although the G.O. neglected to determine at the time of the audit report if the underreported costs which the auditors determined had been expended by the grantee were allowable or allocable to their relevant grants, the regulations require the G.O. to ensure that audit findings are resolved. ^{8/} This

^{7/} Grant program is defined as "those activities and operations of the grantee which are necessary to carry out the purposes of the grant,..." 41 C.F.R. § 1-15.702-8 (emphasis added).

^{8/} 41 C.F.R. § 29-70.217 entitled: Audit requirements. provides:

* * * * *

(b) Cognizant agency responsibilities.

* * * * *

(vi) Maintain a followup system on audit and related investigative findings to ensure that these findings are resolved.

requirement applies to findings that favor the grantee as well as those that indicate that grant funds may have been misspent. To interpret the regulation otherwise would destroy the cooperative nature between the Federal Government and the units of government that acted as CETA prime sponsors, and transform the audit process from a neutral inquiry to assure the proper expenditure of grant funds and may make prime sponsors unwilling if unwitting, financial contributors to the administration of CETA.

I am therefore requiring the G.O. to carefully review his records to determine if any funds from the grants indicated in the Stipulation of Facts, paragraph 5, which pertain to the activities wherein the grantee underreported actual expenditures, had unexpended funds which were returned to the Federal Government, either directly by the grantee or as a portion of the funds subsequently reallocated to the New York Balance of State CETA program. To the extent that such funds would have been available to repay the grantee for its underreported costs, and such costs were adequately documented by the auditors' workpapers and reports (retained pursuant to 41 C.F.R. § 29-70.217(j)), the G.O. is to make a good faith effort at this time to determine which of the underreported costs could be deemed to be allowable and allocable to its relevant grant. These allowable costs could then be treated as a debt owed to the grantee. Once the debt is established, then and only then, may it be properly credited as an offset against the amount of the disallowed costs.

The G.O. is requested to advise me as to the outcome of his determination as to the allowability and allocability of the grantee's underreported costs.

CONCLUSION AND ORDER

For the foregoing reasons, the ALJ's conclusion that the grantee is permitted to offset its underreported expenses against the disallowed costs is REVERSED. The case is REMANDED to the Grant Officer to proceed in the manner outlined above. The grantee, Steuben County, New York, is therefore ORDERED to pay \$92,928.00 less any credit determined by the Grant Officer to be allowable, to the Department of Labor. This payment shall be from non-Federal funds. Milwaukee County, Wisconsin v. Donovan, 771 F.2d 983, 993 (7th Cir. 1985), cert. denied, 476 U.S. 1140 (1986).

SO ORDERED.


Secretary of Labor

Washington, D.C.


CERTIFICATE OF SERVICE

Case Name: In the Matter of U.S. Department of Labor v.
Steuben County, New York

Case No. : 83-CTA-162

Document : Final Decision and Order

A copy of the above-referenced document was sent to the following
persons on JUL 22 1993.



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